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11 **UNITED STATES BANKRUPTCY COURT**

12 **CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**

13 In re

14 THE SOURCE HOTEL, LLC,

15
16 Debtor.

Case No. 8:21-bk-10525-ES

Chapter 11

17 **STIPULATION FOR RELIEF FROM THE**
18 **AUTOMATIC STAY AND ANCILLARY**
19 **RELIEF**

DATE:

TIME: [No Hearing Required]

PLACE:

20 **WHEREAS**, Shady Bird Lending, LLC ("Shady Bird") is the holder of the
21 senior deed of trust on a ground lease for the real property bearing APN Nos. 276-361-20
22 and 276-361-22, consisting of a partially constructed 178-room, seven story hotel building
23 located in Buena Park, California (the "Property" or "Project") which debtor and debtor in
24 possession The Source Hotel, LLC (the "Debtor") leased under a ground lease dated
25 April 6, 2015 ("Ground Lease") from the lessor, The Source at Beach, LLC (the "Ground
26 Lessor").

27 **WHEREAS**, on February 8, 2021, Shady Bird filed a complaint against the
28 Debtor in the Superior Court of the State of California for the County of Orange (the

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1 "Superior Court") for (i) specific performance for appointment of a receiver, and (ii) waste,
2 thereby commencing the Superior Court action bearing Case No. 30-2021-01183489-CU-
3 OR-CJC (the "State Court Action").

4 **WHEREAS**, shortly after filing the State Court Action, Shady Bird filed,
5 among other things, its "Ex Parte Application for: (1) Order Appointing Receiver; (2)
6 Temporary Restraining Order; and (3) Order to Show Cause Re: Confirmation of
7 Appointment of Receiver and Preliminary Injunction in Aid of Receiver; Memorandum of
8 Points and Authorities in Support Thereof" (the "Receivership Application").

9 **WHEREAS**, on February 17, 2021, the Superior Court granted the
10 Receivership Application and entered its "Ex Parte Order Appointing Receiver and Order
11 to Show Cause and Temporary Restraining Order – Rents, Issues, and Profits" (the
12 "Receivership Order"), pursuant to which, among other things, Bellann R. Raile (the
13 "Receiver") was appointed receiver for the Project.

14 **WHEREAS**, a trustee's sale of the Debtor's interest in the Ground Lease
15 was scheduled for March 1, 2021.

16 **WHEREAS**, on or about July 29, 2020, Evertrust Bank ("Evertrust")
17 commenced a lawsuit against, *inter alia*, Donald Chae ("Donald") and Min Chae ("Min"
18 and together with Donald, the "Chaes") in the Superior Court of California, County of
19 Orange, Central Justice Center, filed as case number 30-2020-01153205-CU-BC-CJC
20 (the "Guarantor Action").

21 **WHEREAS**, in or about January 2021, Shady Bird and Evertrust entered
22 into a "Stipulation to Substitute Plaintiff Evertrust Bank with Shady Bird Lending, LLC as
23 Real Party In Interest" (the "Substitution Stipulation") in the Guarantor Action. On or
24 about January 25, 2021, the state court entered an order approving the Substitution
25 Stipulation thereby substituting Shady Bird in place of Evertrust as the plaintiff and real
26 party in interest in the Guarantor Action.

27 **WHEREAS**, on February 26, 2021 (the "Petition Date"), the Debtor filed a
28 voluntary petition for relief under title 11 of the United States Code, commencing this

1 chapter 11 case.

2 **WHEREAS**, on or about March 10, 2021, Shady Bird obtained a right to
3 attach order and order for issuance of writ of attachment after hearing against Donald
4 and a right to attach order and order for issuance of writ of attachment after hearing
5 against Min (collectively, the "Right to Attach Orders") in the Guarantor Action.
6 Subsequently, writs of attachment were issued by the clerk of the court in the Guarantor
7 Action (collectively, the "Writs of Attachment"), and Shady Bird asserts that it levied
8 certain assets of the Chaes under the Right to Attach Orders and Writs of Attachment.

9 **WHEREAS**, on March 25, 2021, Shady Bird filed its "Motion of Shady Bird
10 Lending, LLC for Order Designating Chapter 11 Case As Single Asset Real Estate Case
11 Pursuant to 11 U.S.C. §§ 101(51B) and 362(d)(3); Memorandum of Points and
12 Authorities; Declarations of Ronald Richards, Bellann R. Raile, and Brent Little in Support
13 Thereof" (the "SARE Motion").

14 **WHEREAS**, on March 25, 2021, Shady Bird filed its "Motion of Shady Bird
15 Lending, LLC for Order Excusing State Court Receiver From Turnover of Assets
16 Pursuant to 11 U.S.C. § 543; Memorandum of Points and Authorities; Declarations of
17 Ronald Richards, Bellann R. Raile, and Brent Little in Support Thereof" (the "Section 543
18 Motion").

19 **WHEREAS**, on April 1, 2021, Shady Bird filed its "Notice of Motion and
20 Motion for Relief From the Automatic Stay Under 11 U.S.C. § 362 (with supporting
21 declarations) (Real Property)" (the "RFS Motion").

22 **WHEREAS**, the Debtor filed oppositions to the SARE Motion, the Section
23 543 Motion, and the RFS Motion.

24 **WHEREAS**, on April 28, 2021, the Bankruptcy Court entered its "Order
25 Denying Motion of Shady Bird Lending, LLC for Order Designating Chapter 11 Case As
26 Single Asset Real Estate Case Pursuant to 11 U.S.C. §§ 101(51B) and 362(d)(3)" (the
27 "SARE Order").

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1 **WHEREAS**, on April 28, 2021, Shady Bird filed its "Notice of Appeal of
2 Order Denying Motion of Shady Bird Lending, LLC for Order Designating Chapter 11
3 Case As Single Asset Real Estate Case Pursuant to 11 U.S.C. §§ 101(51B) and
4 362(d)(3)" (the "SARE Appeal").

5 **WHEREAS**, the SARE Appeal is pending before the United States District
6 Court, Central District of California, Western Division, bearing Case No. 8:21-cv-00824-
7 FLA.

8 **WHEREAS**, on April 28, 2021, the Bankruptcy Court entered its "Order,
9 After Hearing, Granting, On An Interim Basis, Motion of Shady Bird Lending, LLC for
10 Order Excusing State Court Receiver From Turnover of Assets Pursuant to 11 U.S.C. §
11 543" (the "First Interim Receiver Order").

12 **WHEREAS**, on July 1, 2021, the Bankruptcy Court entered its "Second
13 Interim Order Regarding Motion of Shady Bird Lending, LLC for Order Excusing State
14 Court Receiver From Turnover of Assets Pursuant to 11 U.S.C. § 543" (the "Second
15 Interim Receiver Order").

16 **WHEREAS**, continued hearings on the RFS Motion and the Section 543
17 Motion are presently scheduled for September 30, 2021.

18 **WHEREAS**, on June 2, 2021, the Debtor filed its "Application of Debtor and
19 Debtor in Possession to Employ NAI Capital Commercial, Inc. As Real Estate Broker
20 Pursuant to 11 U.S.C. §§ 327 and 328; Declaration of Chris Jackson in Support Thereof"
21 (the "NAI Application").

22 **WHEREAS**, Shady Bird filed a motion in the Guarantor Action for summary
23 adjudication (the "MSA") against the Chaes on its first and second causes of action for
24 breach of guaranty agreements that was scheduled for hearing on June 9, 2021.

25 **WHEREAS**, the state court in the Guarantor Action issued a tentative ruling
26 to deny the MSA and ultimately continued the hearing on the MSA to July 28, 2021, for
27 further briefing.

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1 **WHEREAS**, on June 15, 2021, Shady Bird filed its “Objection of Shady Bird
2 Lending, LLC to Application of Debtor and Debtor in Possession to Employ NAI Capital
3 Commercial, Inc. As Real Estate Broker Pursuant to 11 U.S.C. §§ 327 and 328; Request
4 for Hearing” (the “NAI Objection”).

5 **WHEREAS**, a hearing on the NAI Application was held on July 1, 2021, at
6 which time the Court overruled the NAI Objection and granted the NAI Application. The
7 Court entered an order approving the Debtor’s employment of NAI Capital Commercial,
8 Inc. (“NAI”) on July 2, 2021 (the “NAI Employment Order”).

9 **WHEREAS**, as part of the agreement memorialized in this Stipulation,
10 Shady Bird, the Debtor and others entered into that certain Access Agreement dated
11 June 30, 2021, a true and correct copy of which is attached hereto as Exhibit “1” (the
12 “Access Agreement”).

13 **WHEREAS**, as part of the agreement memorialized in this Stipulation,
14 Shady Bird and the Chaes entered into that certain “Tolling Agreement” dated July 2,
15 2021 (as amended, the “First Tolling Agreement”), tolling and extending to July 16, 2021
16 the respective 90-day periods in California Code of Civil Procedure § 493.030(b) and 11
17 U.S.C. § 547, with respect to any lien(s) arising from or created by either the Right to
18 Attach Orders or the Writs of Attachment or created by levy pursuant to either the Right
19 to Attach Orders or the Writs of Attachment.

20 **WHEREAS**, the Debtor and Shady Bird are mindful of the costs and risks
21 associated with the Section 543 Motion, the RFS Motion, and the SARE Appeal, and
22 have determined that it is in the best interests of the Debtor, the estate, and Shady Bird
23 to enter into this Stipulation on the agreed-upon terms as described herein.

24 **NOW THEREFORE**, and upon entry of an order approving this Stipulation,
25 the Debtor, Shady Bird, and the Chaes agree as follows:

26 1. Shady Bird consents to the Debtor’s employment of NAI as the
27 Debtor’s real estate broker as approved by the Bankruptcy Court in the NAI Employment
28 Order and upon the terms and conditions set forth in the Listing Agreement attached to

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1 the NAI Application. Shady Bird waives any right to appeal or to otherwise challenge the
2 NAI Employment Order or the Debtor's employment of NAI.

3 2. The Debtor shall file a motion seeking authority to conduct an
4 auction, or a sale by overbid if an acceptable stalking horse buyer is located, of the
5 Property (the "Auction") for hearing before the Bankruptcy Court on September 30, 2021,
6 or the first available Bankruptcy Court hearing date thereafter (the "Auction Date"). In
7 order to be eligible to participate in the Auction, bidders will need to be deemed
8 financially qualified by NAI and provide a deposit (the "Good Faith Deposit") of at least
9 4% of the amount of the initial bid by no later than the date that is seven (7) calendar
10 days prior to the Auction Date (the "Bid Deadline"). The Good Faith Deposit shall be
11 deemed non-refundable if the bidder is deemed by the Bankruptcy Court to be the
12 winning bidder (the "Successful Bidder") and the Successful Bidder fails to close its
13 purchase of the Property within fifty (50) calendar days following the date of entry of the
14 Bankruptcy Court's order approving the sale (the "Approval Order") (such 50th calendar
15 day, the "Outside Closing Date") for a reason other than a material default by the Debtor.
16 At the Auction, (i) Shady Bird shall automatically be deemed a financially qualified
17 overbidder, (ii) Shady Bird shall be authorized and allowed to credit bid as to any overbid
18 procedure up to the full amount of its claim as calculated in Paragraph 8 below, (iii)
19 Shady Bird's registration as a qualified overbidder shall not cause it to forfeit a four
20 percent (4%) credit against its claim, (iv) Shady Bird shall not be required to post a Good
21 Faith Deposit in order to be deemed a qualified overbidder, and (v) Shady Bird's
22 registration as a qualified overbidder shall not require it to bid. Nothing herein prevents
23 the Debtor from seeking Bankruptcy Court approval of a stalking horse bidder provided
24 that such Bankruptcy Court approval of a stalking horse bidder is not inconsistent with
25 any of the foregoing, or unless otherwise agreed to by Shady Bird.

26 3. Intentionally Omitted.

27 4. The Receiver shall remain in place during the entirety of the
28 marketing/sale process in accordance with the terms and conditions of the First Interim

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1 Receiver Order, the Second Interim Receiver Order, or any subsequent order entered by
2 the Bankruptcy Court, unless Shady Bird agrees, in writing, in its sole and exclusive
3 discretion, otherwise.

4 5. All reasonable fees and costs incurred by the Receiver in excess of
5 the \$200,000 previously gifted by Shady Bird (the "Gifted Advance"), as detailed in the
6 First Interim Receiver Order and the Second Interim Receiver Order, shall be added to
7 the Debtor's outstanding debt and Shady Bird's claim against the Debtor, with any
8 dispute over the reasonableness of the Receiver's fees and costs, Shady Bird's
9 attorneys' fees and costs, trustee fees, and other fees, charges, and costs due under the
10 operative loan agreement, to be resolved by the Bankruptcy Court (collectively, the
11 "Bankruptcy Court Determined Fees and Costs"). The parties shall try to resolve, within
12 the next thirty (30) days from the date of the execution of this Stipulation, and prior to
13 involving the Bankruptcy Court, any disputes about Shady Bird's fees referenced herein
14 through informal settlement discussions. If the Bankruptcy Court Determined Fees and
15 Costs have not been resolved prior to the disposition of the Property, a reserve from the
16 proceeds of a closed sale of the Property to cover Shady Bird's legal fees and expenses
17 in litigating any dispute with the Debtor regarding the Bankruptcy Court Determined Fees
18 and Costs shall be set aside.

19 6. In accordance with the First Interim Receiver Order and the Second
20 Interim Receiver Order, the Receiver shall continue to provide full and complete access
21 to the Property to the Debtor and all prospective buyers upon not less than twenty-four
22 (24) hours prior notice being provided to the Receiver.

23 7. Shady Bird shall be prohibited from having any direct or indirect
24 communication (whether oral or in writing) with any prospective buyers of the Property or
25 any of their affiliates or representatives.

26 8. The outstanding debt owed by the Debtor to Shady Bird, excluding
27 the Bankruptcy Court Determined Fees and Costs, is \$31,761,606.82 through June 18,
28 2021, and shall increase based on simple, non-compound default interest at the rate of

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1 13.5% per annum until September 30, 2021, at which point such debt shall be
2 \$32,926,074.66. Shady Bird shall provide a payoff statement to the Debtor upon the
3 Debtor's request. Subject to the foregoing, simple, non-compound default interest at the
4 rate of 13.5% and reasonable attorneys' fees and costs (as determined in accordance
5 with Paragraph 5 above) shall continue to accrue and be added to the outstanding debt
6 owed by the Debtor to Shady Bird until and if the loan is paid off or a foreclosure sale
7 occurs. By this paragraph, the parties are establishing the means by which to calculate
8 the outstanding debt due and owing by the Debtor to Shady Bird, and the Debtor is
9 providing Shady Bird with a release.

10 9. Shady Bird shall have the ability to credit bid its full claim on its debt,
11 as calculated herein, in connection with any sale and take free and clear title in that
12 manner if Shady Bird so desires and as permitted by order of the Bankruptcy Court
13 and/or applicable law.

14 10. The Debtor stipulates to relief from stay to permit a non-judicial
15 foreclosure sale to occur on a date (the "Foreclosure Date") that shall be after (a) the
16 Auction Date, if there is no financially qualified bidder by the Bid Deadline, or (b) the
17 Outside Closing Date, if there is at least one financially qualified bidder and provided a
18 sale does not close on or before the Outside Closing Date. Shady Bird shall provide the
19 Debtor, the Chaes, and their respective counsel with written notice by email of the
20 Foreclosure Date immediately upon such date being determined. The "Tolling Period"
21 shall be defined herein to constitute the period commencing with June 18, 2021, and
22 ending on the Foreclosure Date. The Chaes and the Debtor shall file not file any action,
23 including a state court action, to enjoin any non-judicial foreclosure sale by Shady Bird
24 permitted by this Stipulation; provided, however, nothing herein shall be interpreted to
25 prohibit either or both of the Chaes from filing a bankruptcy case, which the parties agree
26 would not stay any such non-judicial foreclosure against the Property.

27 11. The Debtor shall continue to have the right to pay off its outstanding
28 debt to Shady Bird, in full, pending any sale and at any time up until the Foreclosure Date

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1 provided such payment would not cause a material breach by the Debtor of a Bankruptcy
2 Court approved sale agreement

3 12. Upon the Bankruptcy Court's approval of this Stipulation, the Chaes,
4 as guarantors of the Debtor's indebtedness to Shady Bird, shall execute a mutually-
5 agreeable stipulation (the "Stipulation for Judgment") providing for entry of a stipulated
6 judgment (the "Stipulated Judgment") in the Guarantor Action in favor of Shady Bird, in a
7 form agreeable to Shady Bird and the Chaes, in the amount of \$31,131,000.70 through
8 July 28, 2021, (a) less (i) any and all proceeds or amounts received by Shady Bird in
9 connection with any sale of the Property (including, without limitation, any forfeited Good
10 Faith Deposit) or (ii) any credit bids by Shady Bird in connection with any sale of, or
11 foreclosure upon, the Property, plus (b) interest on the outstanding amount of the
12 Stipulated Judgment (after application of the preceding (a)) at the statutory rate of
13 interest of ten percent (10%) per annum (the "Guaranty Amount").

14 13. Upon the Bankruptcy Court's approval of this Stipulation, the
15 Stipulation for Judgment shall be signed and filed in the Guarantor Action. If, after the
16 expiration of the Tolling Period and the completion of the sale of the Property, including,
17 without limitation, any foreclosure sale, there is any Guaranty Amount owing to Shady
18 Bird, then the Stipulated Judgment shall be entered with the amount set forth in the
19 Stipulated Judgment to be calculated at that time by the Chaes and Shady Bird in
20 accordance with Paragraph 12 above. Pending the Tolling Period, the Guarantor Action
21 shall be stayed. If, at any point, the Guaranty Amount is paid in full, the Chaes'
22 obligations under the Stipulated Judgment shall be deemed satisfied in full and, if such
23 payment occurs after entry of the Stipulated Judgment, then Shady Bird shall file a
24 satisfaction of judgment in the Guarantor Action. Without limitation to any stay in the First
25 Tolling Agreement or Second Tolling Agreement (defined below), during the Tolling
26 Period, any act to enforce, collect upon, or execute upon the Stipulated Judgment or to
27 otherwise collect from the Chaes or their respective relatives or property is stayed;
28 provided, however, that upon the expiration of the Tolling Period and the entry of the

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1 Stipulated Judgment, Shady Bird may enforce the Stipulated Judgment and all rights,
2 exemptions, remedies, and defenses of the Chaes to the enforcement of the Stipulated
3 Judgment are reserved, except the Chaes may not seek to set aside or appeal the
4 Stipulated Judgment or assert any defenses as to its validity.

5 14. During the Tolling Period, Donald and Eun Hee Chae will not seek
6 (a) to expunge the lis pendens recorded with the Los Angeles County Recorder's Office
7 on August 13, 2020, as Document No. 20200941880 (the "Lis Pendens"), on the real
8 property located at 2200 Sherwood Road, San Marino, California 91108 (the "Sherwood
9 Property") in connection with the Guarantor Action, or (b) to transfer the Sherwood
10 Property. Shady Bird shall cause, and the Stipulation for Judgment shall provide for, the
11 Guarantor Action to be dismissed, without prejudice, as to Eun Hee Chae and any
12 defendants therein other than the Chaes. The statute of limitations for the fraudulent
13 transfer (Cal. Civil Code, §§ 3439 et seq.) and constructive trust causes of action pled in
14 the Guarantor Action against Donald Chae and Eun Hee Chae relating to the Sherwood
15 Property shall be tolled during the Tolling Period as to Shady Bird and such tolling shall
16 immediately cease, and such statutes of limitations shall continue to run again, upon the
17 expiration of the Tolling Period. If, after the Tolling Period, Shady Bird re-files an action
18 to re-assert a claim to avoid the transfer of title of the Sherwood Property, then the Chaes
19 do not object to Shady Bird recording a lis pendens in connection therewith in
20 accordance with applicable law, and the rights, remedies and defenses of the Chaes and
21 Eun Hee Chae in response thereto are preserved, except for any defense that the lis
22 pendens was already filed and maintained on the property. Upon the filing of a new lis
23 pendens as provided herein, Shady Bird shall cause the Lis Pendens to be released and
24 terminated.

25 15. Other than the Stipulated Judgment and any claim to avoid the
26 transfer of title to the Sherwood Property, Shady Bird on behalf of itself and all those
27 claiming by, through, under, or on its behalf, including, but not limited to, all related and/or
28 connected persons, entities, parent companies, affiliated companies, subsidiary

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1 companies, assigns, agents, representatives, employees, officers, directors, members,
2 managers, principals, partners, owners, joint venturers, attorneys, predecessors, and
3 successors, do hereby fully, finally, and forever, settle, release, relieve, acquit, and
4 discharge Young Mee Chae, Eun Hee Chae, Donald Chae, and Min Chae, and their
5 respective relatives, agents, attorneys, representatives, successors, assigns, and heirs
6 (collectively, the "Released Parties"), from any and all claims, demands, causes of action,
7 obligations, rights, suits, debts, expenses, damages, losses, attorneys' fees, costs,
8 liabilities, and/or remedies, of any nature or kind whatsoever, whether due or owing in the
9 past, present, or future, and whether based upon contract, tort, statute, or any other legal
10 or equitable theory of recovery, and whether known or unknown, suspected or
11 unsuspected, fixed or contingent, matured or not matured, including, without limitation,
12 any and all causes of action and matters (a) that were raised or could have been raised
13 in the Guarantor Action or (b) under, arising out of, or related to the Debtor's
14 indebtedness to Shady Bird or the guaranties thereof.

15 In furtherance of Shady Bird's intention that the releases provided herein shall
16 extend to all claims and remedies, whether known or unknown, suspected or unsuspected,
17 discovered or undiscovered, Shady Bird hereby relinquishes any and all rights conferred
18 upon it by Section 1542 of the California Civil Code which reads as follows:

19 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
20 **THAT THE CREDITOR OR RELEASING PARTY DOES NOT**
21 **KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT**
22 **THE TIME OF EXECUTING THE RELEASE AND THAT, IF**
23 **KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY**
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
OR RELEASED PARTY.

24 Shady Bird expressly acknowledges and understands that the waiver of the
25 provisions of Section 1542 of the Civil Code was separately bargained for. Shady Bird
26 agrees that the releases provided for in Paragraph 15 and this waiver of Section 1542 of
27 the Civil Code shall be given full force and effect in accordance with each and all of the
28 express terms and provisions of this Stipulation, including those terms and provisions

1 relating to unknown and unsuspected claims. This waiver of Section 1542 of the Civil
2 Code does not apply to unknown and unsuspected claims for (1) corporate waste, (2)
3 conversion, (3) avoidance of a fraudulent transfer, (4) fraudulent concealment, fraud, or
4 intentional misrepresentation, or (5) trespass to chattel; provided, however, Shady Bird
5 cannot, under any circumstances or under any legal theory, collect from the Released
6 Parties more than the Guaranty Amount and, upon Shady Bird's receipt of the Guaranty
7 Amount, the claims set forth in nos. (1) through (5) of this sentence are released.

8 RR (Shady Bird)

9 16. Notwithstanding any case law to the contrary, including, without
10 limitation, Butler America, LLC v. Aviation Assurance Company, LLC, 55 Cal. App. 5th
11 136 (2020), Shady Bird agrees and acknowledges that, upon entry of the Stipulated
12 Judgment, there will be no merger of the releases set forth in Paragraph 15 above into
13 the Stipulated Judgment and that such releases will remain in full force (subject to the
14 exceptions expressly set forth therein).

15 17. Pending the "Sale Closing Date" (as defined herein), the Chaes shall
16 not cause the Ground Lessor to cancel or terminate the "Ground Lease," pursuant to
17 which the Debtor is the ground lessee, any amendments thereto, or the "Memorandum of
18 Ground Lease" (collectively, the "Ground Lease"). Following the Sale Closing Date, the
19 restriction in the preceding sentence of this Paragraph 17 shall be of no further force or
20 effect and (a) Ground Lessor may exercise any and all of its rights, and enforce any and
21 all of its remedies, including termination or cancellation of the Ground Lease, and (b) the
22 Debtor, as the ground lessee under the Ground Lease, or any other ground lessee under
23 the Ground Lease, including, without limitation, any successor to the Debtor, shall be
24 subject to any and all obligations, rights and remedies of Ground Lessor, in, under, to,
25 and/or with respect to the Ground Lease. The "Sale Closing Date" means (a) if there is
26 one or more financially qualified bidders prior to the Bid Deadline, then the Outside
27 Closing Date, and (b) if there is no financially qualified bidder by the Bid Deadline, then
28 the date that is ten (10) calendar days after the Foreclosure Date.

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1 18. The periods for the avoidance, dissolution, or termination under
2 California law or the Bankruptcy Code with respect to any liens created by, related or
3 pursuant to, or arising from either the Right to Attach Orders, the Writs of Attachment, or
4 any other enforcement steps or proceedings are tolled during the Tolling Period and are
5 extended through the Tolling Period. Concurrently with the execution of this Stipulation,
6 Shady Bird shall execute the Tolling Agreement attached hereto as Exhibit "2" (the
7 "Second Tolling Agreement") amending the First Tolling Agreement and tolling and
8 extending the tolling period set forth therein through the Tolling Period, and the terms of
9 the Second Tolling Agreement are incorporated herein by this express reference.
10 Consequently, if either or both of Chaes file(s) bankruptcy(ies) during the Tolling Period,
11 his/their rights with respect to the dissolution, termination, or avoidance of any liens
12 created by, related to, or arising from either the Right to Attach Orders, the Writs of
13 Attachment, or any other enforcement steps by Shady Bird would be the same as if
14 he/they had filed for bankruptcy on June 18, 2021. The Second Tolling Agreement shall
15 be binding upon execution and shall be of full force and effect whether or not this
16 Stipulation is approved by order of the Bankruptcy Court.

17 19. By this Stipulation, the Parties request approval of the Access
18 Agreement.

19 20. Upon entry of an order approving this Stipulation, Shady Bird and the
20 Debtor may proceed on the terms herein without further order of the Bankruptcy Court or
21 any action by the parties.

22 21. The SARE Appeal shall continue without disruption or delays.
23 However, in the event the SARE Order is reversed, it shall have no effect whatsoever on
24 the terms of this Stipulation, and it shall not provide Shady Bird or any other party with
25 any rights or claims that are not consistent with the terms of this Stipulation, including, but
26 not limited to, requiring the Debtor to file any plan of reorganization or to commence
27 making any payments to Shady Bird, and it shall not provide Shady Bird with any
28 additional relief from stay rights that are not otherwise provided in this Stipulation.

SulmeyerKupetz, A Professional Corporation
333 SOUTH GRAND AVENUE, SUITE 3400
LOS ANGELES, CALIFORNIA 90071-1406
TEL. 213.626.2311 • FAX 213.629.4520

1 22. This Stipulation may be signed in counterparts and signatures may
2 be delivered by fax or email, each of which shall be deemed an original, but all of which
3 together shall constitute one and the same instrument. Each person who executes this
4 Stipulation on behalf of a party hereto represents that he or she is duly authorized to
5 execute this Stipulation on behalf of such party.

6 23. The Access Agreement, the Second Tolling Agreement, and this
7 Stipulation constitute the entire agreement between the parties in respect of the subject
8 matter hereof and shall not be modified, altered, amended, or vacated without the prior
9 written consent of each of the parties hereto. No statement made or action taken in the
10 negotiation of this Stipulation may be used by any party for any purpose whatsoever.

11 24. Each party represents and warrants to the other party that it (a)
12 made this Stipulation freely and voluntarily and with full knowledge of its significance; and
13 (b) has been represented by counsel of its own choice in the negotiations preceding the
14 execution of this Stipulation and in connection with the preparation and execution of this
15 Stipulation.

16 25. Notwithstanding the possible applicability of Rules 6004, 7062, and
17 9014 of the Federal Rules of Bankruptcy Procedure, or otherwise, the terms and
18 conditions of this Stipulation are immediately effective and enforceable upon its entry.

19 26. The Bankruptcy Court shall retain exclusive jurisdiction to hear any
20 matters or disputes arising from or relating to this Stipulation, the Access Agreement, and
21 the Second Tolling Agreement. Any request for relief brought before the Bankruptcy Court
22 to resolve a dispute arising from or related to this Stipulation, the Access Agreement, and
23 the Second Tolling Agreement, and the matters agreed to herein, shall be brought on
24 proper notice and in accordance with the relevant Federal Rules of Bankruptcy Procedure
25 and the Local Bankruptcy Rules for the Central District of California.

26 27. This Stipulation may be filed in any court of competent jurisdiction as
27 evidence that the automatic stay in the above-styled bankruptcy has been modified for
28 cause, as provided herein, under 11 U.S.C. § 362(d).

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333 SOUTH GRAND AVENUE, SUITE 3400
LOS ANGELES, CALIFORNIA 90071-1406
TEL. 213.628.2311 • FAX 213.629.4520

1 DATED: July 15, 2021

The Source Hotel, LLC

2
3
4 By: 

5 Its: _____

6 DATED: July 16, 2021

Shady Bird Lending, LLC

7
8 
9 By: _____

10 Its: Manager

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12
13
14 Approved as to Form:

15 DATED: July 19, 2021

SulmeyerKupetz
A Professional Corporation

16
17
18 By: 

Daniel A. Lev
Attorneys for Shady Bird Lending, LLC

19
20 DATED: July 16, 2021

Law Offices of Ronald Richards & Associates, APC

21
22
23 By: 

Ronald Richards
Attorneys for Shady Bird Lending, LLC

24
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26 (signatures continued on next page)

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DATED: July 16, 2021

Levene, Neale, Bender, Yoo & Brill L.L.P.

By: 

Ron Bender
Juliet Y. Oh
Attorneys for The Source Hotel, LLC, Debtor
and Debtor in Possession

DATED: July ___, 2021

Pachulski Stang Ziehl & Jones, LLP

By: _____
Steven Kahn
Attorneys for Donald Chae and Min Chae

(signatures continued on next page)

SulmeyerKupetz, A Professional Corporation
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LOS ANGELES, CALIFORNIA 90071-1406
TEL 213.626.2311 • FAX 213.629.4520

1 DATED: July __, 2021

Levene, Neale, Bender, Yoo & Brill L.L.P.

2

3

4

By: _____

Ron Bender

Juliet Y. Oh

Attorneys for The Source Hotel, LLC, Debtor
and Debtor in Possession

5

6

7 DATED: July 16, 2021

Pachulski Stang Ziehl & Jones, LLP

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By: _____

Steven Kahn

Attorneys for Donald Chae and Min Chae

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12 (signatures continued on next page)

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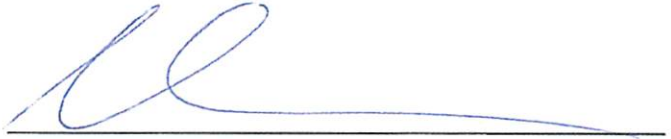
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333 SOUTH GRAND AVENUE, SUITE 3400
LOS ANGELES, CALIFORNIA 90071-1406
TEL 213.626.2311 • FAX 213.629.4520

1 As to provisions involving the Chae:

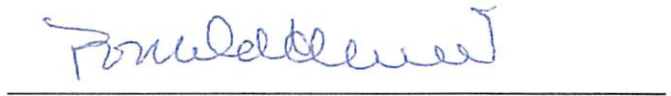
2 DATED: July 15, 2021

Min Chae

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6 DATED: July 15, 2021

Donald Chae

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EXHIBIT 1

ACCESS AGREEMENT

This Access Agreement (the "Agreement") dated this 2nd day of July 2021 (the "Agreement Date") regarding The Source Hotel, located at 6986 Beach Blvd., Buena Park, CA 90621 (the "Property" or "Hotel"), is entered into by and between Shady Bird Lending, LLC ("Shady Bird"), on the one hand, and M+D Properties, The Source Hotel, LLC, and Greenland Construction Services, LLC (collectively, the "Consenting Parties"), on the other hand. Shady Bird and Consenting Parties may be collectively referred to individually as the "Party" and together as the "Parties."

The Consenting Parties hereby agree to do the following by June 30, 2021 to the extent it is within their respective control to provide the consent, information, and documents set forth below:

1. Consent to (a) Shady Bird contacting DKY Architects ("DKY") to obtain copies of all plans, specifications and costs as the Architect of Record in the possession of DKY (collectively, the "Plans") (b) direct communication between DKY and Shady Bird regarding the Plans, and (c) DKY providing copies of the Plans to Shady Bird.
2. Upon reasonable notice and during normal business hours, permit Shady Bird reasonable access to view the FF&E onsite at the Property, the five (5) rooms in retail areas, and the mechanical equipment in the Parking Garage, and consent to access to view the FF&E and equipment for the Property located offsite in storage, including, but not limited to, storage at Westransco in Corona and at Fairmont Designs in Buena Park.
3. Upon reasonable notice and during normal business hours, provide reasonable access to Shady Bird to walk and view the Hotel Property (as permitted by, and with the cooperation of, the receiver).
4. Provide Shady Bird with either electronic copies, or reasonable access to review onsite, the drawings for the Hotel located at the Hotel or in the construction office next to the Hotel.

5. Provide Shady Bird at no cost with a copy of the City permitted sets of plans for the Hotel.
6. Consent to the City of Buena Park providing to Shady Bird a copy of all permit packages and to Shady Bird discussing with all departments within the City of Buena Park and other agencies associated with project permitting (OC Health Dept., SCAQMD, OCFA, etc.)

Shady Bird consents to all of this same information and access being provided to all qualified potential bidders. To the extent that this Agreement requires providing Shady Bird with copies of, or access to, documents, plans, permits, or other written information, providing Shady Bird or qualified bidders with a file share link to such documents, plans, permits or other written information shall be considered full compliance with such requirement.

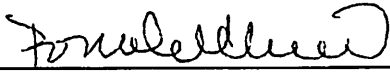
On mutually agreeable day and time selected by the Parties, and with (i) a representative of The Source Hotel LLC present at all times and (ii) the consent and oversight of the receiver, the Consenting Parties consent to the receiver opening crates containing FF&E of The Source Hotel, LLC, for the sole and limited purpose of viewing such FF&E (where located) and in order to confirm that such FF&E is not damaged and such FF&E shall be immediately returned to its packaging and crate and the crate shall be re-sealed. The foregoing shall be carried out with the utmost care and without damage to the FF&E and shall be done at the sole expense of Shady Bird (including receiver fees and costs) and without any expense or cost being added to the amount Shady Bird asserts is owing from The Source Hotel, LLC, or any guarantor thereof. If and to the extent that the activities permitted by this paragraph result in any damage to FF&E, Shady Bird shall be responsible for such damage and shall compensate The Source Hotel, LLC, for such damage.

This Agreement is part of a larger settlement agreement(s) among Shady Bird, The Source Hotel, LLC, and others, as set forth in that settlement term sheet exchanged on June 23, 2021, and Shady Bird will continue with the documentation of such settlement agreement(s) in good faith. If such settlement agreement(s) is/are not documented and executed by Tuesday, July 6, 2021, then all rights of Shady Bird under this Agreement and the letter attached hereto as

Exhibit "A" (the "Consent Letter"), and all consents given by Consenting Parties under this Agreement or the Consent Letter, shall automatically terminate and the Consent Letter and all copies thereof, and any and all documents and copies obtained by Shady Bird hereunder, and the data, summaries, and information obtained or derived therefrom, shall not an cannot be used and shall be immediately returned to the Consenting Parties or destroyed.

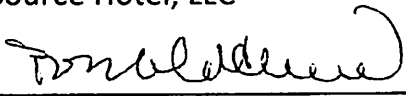
Accepted, Acknowledged, and Agreed:

M+D Properties

By: 


Its: PRESIDENT/CEO

The Source Hotel, LLC

By: 

Its: PRESIDENT/CEO

Greenland Construction Services, LLC

By: 

Its: PRESIDENT/CEO

Shady Bird Lending, LLC

By: _____

Its: _____

Exhibit "A" (the "Consent Letter"), and all consents given by Consenting Parties under this Agreement or the Consent Letter, shall automatically terminate and the Consent Letter and all copies thereof, and any and all documents and copies obtained by Shady Bird hereunder, and the data, summaries, and information obtained or derived therefrom, shall not an cannot be used and shall be immediately returned to the Consenting Parties or destroyed.

Accepted, Acknowledged, and Agreed:

M+D Properties

By: _____

Its: _____

The Source Hotel, LLC

By: _____

Its: _____

Greenland Construction Services, LLC

By: _____

Its: _____

Shady Bird Lending, LLC

By: Ronald K. Kachurak

Its: Manager

Exhibit A

To: Whom It May Concern

From: M+D Properties, The Source Hotel, LLC, and Greenland Construction Services, LLC (collectively, the "Consenting Parties")


RE: **The Source Hotel, 6986 Beach Blvd., Buena Park, CA 90621**

Pursuant to the terms of that Access Agreement dated June 30, 2021, and on the terms and conditions thereof, the Consenting Parties consent to the following to the extent it is within their respective control to provide the consent, information, and documents set forth below:

1. Consent to (a) Shady Bird contacting DKY Architects ("DKY") to obtain copies of all plans, specifications and costs as the Architect of Record in the possession of DKY (collectively, the "Plans") (b) direct communication between DKY and Shady Bird regarding the Plans, and (c) DKY providing copies of the Plans to Shady Bird.
2. Upon reasonable notice and during normal business hours, permit Shady Bird reasonable access to view the FF&E onsite at the Property, the five (5) rooms in retail areas, and the mechanical equipment in the Parking Garage, and consent to access to view the FF&E and equipment for the Property located offsite in storage, including, but not limited to, storage at Westransco in Corona and at Fairmont Designs in Buena Park.
3. Upon reasonable notice and during normal business hours, provide reasonable access to Shady Bird to walk and view the Hotel Property (as permitted by, and with the cooperation of, the receiver).
4. Provide Shady Bird with either electronic copies, or reasonable access to review onsite, the drawings for the Hotel located at the Hotel or in the construction office next to the Hotel.

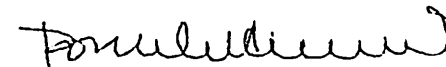
5. Provide Shady Bird at no cost with a copy of the City permitted sets of plans for the Hotel.
6. Consent to the City of Buena Park providing to Shady Bird a copy of all permit packages and to Shady Bird discussing with all departments within the City of Buena Park and other agencies associated with project permitting (OC Health Dept., SCAQMD, OCFA, etc.)

The Source Hotel, LLC

By: 

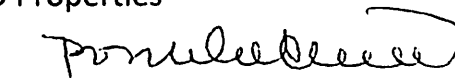
Its: PRESIDENT/CEO

Greenland Construction Services, LLC

By: 

Its: PRESIDENT/CEO

M+D Properties

By: 

Its: PRESIDENT/CEO

EXHIBIT 2

SECOND AMENDMENT TO TOLLING AGREEMENT

This Second Amendment to Tolling Agreement (the “Second Amendment”) amends the Tolling Agreement dated June 24, 2021 (as amended by the Amendment to Tolling Agreement effective July 9, 2021, the “Tolling Agreement”), by and between Shady Bird Lending, LLC (“Shady Bird”), on the one hand, and Donald Chae and Min Chae, on the other hand. This Second Amendment is effective as of the 14th day of July, 2021. Capitalized terms that are not otherwise expressly defined herein shall have the meanings ascribed to them in the Tolling Agreement.

RECITALS

A. The Parties entered into that certain Tolling Agreement dated June 24, 2021. Under the Tolling Agreement, as originally drafted, the “Tolling Date and Time” as defined therein was July 9, 2021.

B. By the Amendment to Tolling Agreement effective July 9, 2021, the Parties amended the Tolling Date and Time to be July 16, 2021.

C. Concurrently with the execution of this Second Amendment, the Parties and others are executing that certain *Stipulation for Relief from the Automatic Stay and Ancillary Relief* (the “Stipulation”) to be filed in the bankruptcy case of The Source Hotel, LLC, Case No. 8:21-bk-10525-ES.

D. The Stipulation contemplates amending the Tolling Agreement and extending the Tolling Date and Time through the “Tolling Period” as defined in the Stipulation.

E. As defined in the Stipulation, the “Tolling Period” is the period commencing June 18, 2021 and ending on the “Foreclosure Date” (as defined in the Stipulation).

F. In exchange for good and valuable consideration, including such consideration set forth in the Stipulation, receipt of which is hereby acknowledged, the Parties amend the Tolling Agreement as set forth herein

AMENDMENT

1. Section 1(a) of the Tolling Agreement is amended as follows:

With respect to any lien arising from or created by either Right to Attach Order or the Writs of Attachment or created by levy pursuant to either Right to Attach Order or the Writs of Attachment, the 90-day periods set forth in 11 U.S.C. § 547 or CCP § 493.030(b) are tolled and extended during the Tolling Period and to and including 11:59 p.m. Pacific Standard Time on the Foreclosure Date (the “Tolling Date and Time”).

2. Section 1 of the Tolling Agreement is amended to include subsection “f.” as follows:

f. The terms "Tolling Period" and "Foreclosure Date" as used herein shall have the respective meanings ascribed to them in the *Stipulation for Relief from the Automatic Stay and Ancillary Relief* to be filed in the bankruptcy case of The Source Hotel, LLC, Case No. 8:21-bk-10525-ES.

3. The term "Tolling Date and Time" as used in and throughout the Tolling Agreement shall have the meaning set forth in Section 1 of this Second Amendment.
4. Except as amended herein, the Tolling Agreement and its terms remain unchanged and in full force and effect.

DATED: 7/6/2021

MIN CHAE

DATED: 7/16/2021

DONALD CHAE

DATED: 7/16/21

SHADY BIRD LENDING, LLC

By: Ronald R. Richmond

Its: Manager

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 333 South Grand Avenue, Suite 3400, Los Angeles, CA 90071.

A true and correct copy of the foregoing document entitled (*specify*): **STIPULATION FOR RELIEF FROM AUTOMATIC STAY AND ANCILLARY RELIEF** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) July 19, 2021, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

See Attached

☒ Service information continued on attached page.

2. SERVED BY UNITED STATES MAIL:

On (*date*) July 19, 2021, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

The Honorable Erithe A. Smith
U.S. Bankruptcy Court
Ronald Reagan Federal Building
411 W. Fourth Street, Suite 5040
Santa Ana, CA 92701

☐ Service information continued on attached page.

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

July 19, 2021
Date

Cheryl Caldwell
Printed Name

/s/Cheryl Caldwell
Signature

ADDITIONAL SERVICE INFORMATION (if needed):

1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")

Ron Bender on behalf of Debtor The Source Hotel, LLC
rb@lnbyb.com

Christopher G. Cardinale on behalf of Creditor City Of Buena Park
ccardinale@agclawfirm.com

Michael G Fletcher on behalf of Creditor Evertrust bank
mfletcher@frandzel.com, sking@frandzel.com

Amir Gamliel on behalf of Interested Party Courtesy NEF
amir-gamliel-9554@ecf.pacerpro.com, cmallahi@perkinscoie.com;DocketLA@perkinscoie.com

Robert P Goe on behalf of Creditor Westranco, Inc.
kmurphy@goeforlaw.com, rgoe@goeforlaw.com;goeforecf@gmail.com

Nancy S Goldenberg on behalf of U.S. Trustee United States Trustee (SA)
nancy.goldenberg@usdoj.gov

Peter F Jazayeri on behalf of Interested Party Cordes & Company, by and through Bellann Raile
peter@jaz-law.com

Peter F Jazayeri on behalf of Other Professional Cordes & Company, by and through Bellann Raile
peter@jaz-law.com

Daniel A Lev on behalf of Creditor Shady Bird Lending, LLC
dlev@sulmeyerlaw.com, ccaldwell@sulmeyerlaw.com;dlev@ecf.inforuptcy.com

Daniel A Lev on behalf of Interested Party Courtesy NEF
dlev@sulmeyerlaw.com, ccaldwell@sulmeyerlaw.com;dlev@ecf.inforuptcy.com

Grant A Nigolian on behalf of Interested Party Courtesy NEF
grant@gnpclaw.com, process@gnpclaw.com;grant.nigolian@gmail.com

Juliet Y Oh on behalf of Debtor The Source Hotel, LLC
jyo@lnbrb.com, jyo@lnbrb.com

Ho-El Park on behalf of Interested Party Courtesy NEF
hpark@hparklaw.com

Ronald N Richards on behalf of Creditor Shady Bird Lending, LLC
ron@ronaldrichards.com, morani@ronaldrichards.com

Ronald N Richards on behalf of Interested Party Courtesy NEF
ron@ronaldrichards.com, morani@ronaldrichards.com

United States Trustee (SA)
ustpreion16.sa.ecf@usdoj.gov